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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/186,342 | 11/04/1998 | DARRELL C. CONKLIN | 97-64 | 1674 |

JENNIFER K JOHNSON
ZYMOGENETICS INC
1201 EASTLAKE AVE EAST
SEATTLE, WA 98102

7590

07/10/2002

EXAMINER

LAZAR WESLEY, ELIANE M

ART UNIT PAPER NUMBER

1646

DATE MAILED: 07/10/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/186,342

Applicant(s)

Conklin

Examiner

Eliane Lazar-Wesley

Art Unit

1646



-- **Th MAILING DATE** of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jun 18, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- 9/18/02
- a) ☒ The period for reply expires 36 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Jun 18, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE:

3. ☒ Applicant's reply has overcome the following rejection(s):
The rejection of claim 10 under 35 USC, 1st paragraph (new matter) has been overcome.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
The declaration of Theodore Whitmore under 37CFR 1.132 has been fully considered. Through further experimentation, he defines a more precise locus for z219c within the 3p21.1-p13 region (see attached sheet)
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: 26
- Claim(s) objected to: none
- Claim(s) rejected: 2, 3, 5, 22, and 24
- Claim(s) withdrawn from consideration: 11-14 and 16-21
8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Art Unit: 1646

Advisory Action

(continuation of § 5)

T. Whitmore performed additional experiments, and defines now the locus for z219c as being at chromosome 3p14.2. He states that "it is well established that gross chromosomal aberrations such as deletions, LOH, and translocations in the 3p14.2 locus, wherein the z219c gene is located, is associated with human cancers." While the Examiner does not discuss the validity of the statement regarding a possible significance for the 3p14.2 locus, the more precise data about mapping the z219c at chromosome 3p14.2 were not presented in the specification as filed, and they do not flow from the specification. At the time the application was filed, z219c was localized within the 3p21.1-p13 region, which spans over a quite large fragment of chromosome 3. The declaration is therefore not deemed persuasive to overcome the rejections of record of claims 2, 3, 5, 22 and 24 under 35 USC 101 and 112, first paragraph.

Note: the newly added claim (25) has been renumbered as claim 26 (Rule 126), and is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eliane Lazar-Wesley, PhD, whose telephone number is (703) 305 4059. The examiner can normally be reached on Monday-Friday from 9:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564.

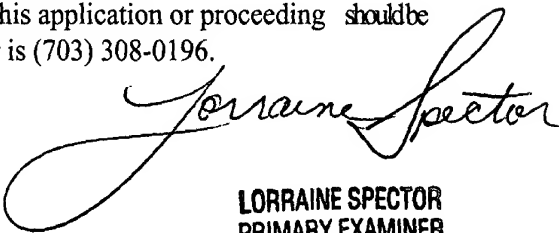
Official papers filed by fax should be directed to (703) 308 4242. Faxed draft or informal communications with the examiner should be directed to (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

ELW

July 09, 2002

ELW


LORRAINE SPECTOR
PRIMARY EXAMINER